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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/847,331

05/03/2001

Jeffrey M. Price

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12/13/2004

COOLEY GODWARD LLP

ATTN: PATENT GROUP

11951 FREEDOM DRIVE, SUITE 1700

ONE FREEDOM SQUARE- RESTON TOWN CENTER

RESTON, VA 20190-5061

EXAMINER

CHO, HONG SOL

ART UNIT

PAPER NUMBER

2662

DATE MAILED: 12/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

AK

Office Action Summary	Application No. 09/847,331	Applicant(s) PRICE, JEFFREY M.	
	Examiner Hong Cho	Art Unit 2662	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 15-26 is/are rejected.
- 7) ☒ Claim(s) 12 and 13 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 May 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>09102001</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102(e) that form the basis for the rejections under this section made in this Office action:

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-5, 8-10, 14-16, 18, 20, 21, 23, 24, and 26 are rejected under 35 U.S.C. 102(e) as being unpatentable over Galand et al (U.S 6424624), hereinafter referred to as Galand.

Re claims 1, 14, 16, 24, and 26, Galand discloses implementing congestion detection and flow control in packet switching network (*controlling establishment of a communication channel in a distributed network environment*, abstract). Galand discloses detecting network congestion in one of nodes (*detecting approach of network congestion in said distributed network environment*, column 3, lines 40-43) and transmitting congestion indication to the network access node (*transmitting and receiving an indicator of said approach of congestion to and at a network access device*, column 3, lines 47-50). Galand discloses sending a congestion indication back to the entry node by setting a Return Congestion Indication bit in a data packet (*generating or terminating, at said network access device, a signal indicative of said congestion in response to said indicator*, column 3, lines 47-50). Galand discloses a network access node rejecting a new connection to avoid overload on any of the links (*preventing, in response to said*

indicator being asserted, said network access device from initiating establishment of a communication channel through said distributed network, column 4, lines 50-52).

Galand discloses setting the number of set RCIs bits less than zero to indicate no congestion status (*deasserting said indicator upon the abatement of said approach of network congestion, column 11, lines 38-42).*

Re claim 2, Galand discloses a user setting up a call connection via the packet switching network (*establishing a packetized voice call, column 4, lines 45-48).*

Re claim 3, Galand discloses monitoring capacity of the network (column 4, lines 60-62).

Re claims 4 and 5, Galand discloses setting and resetting the EFCI bit in the packet header by comparing the queue size to the set-threshold (*comparing the level of network usage against a congestion onset and abatement thresholds to assert or deassert congestion indication, column 12, line 64 to column 13, line 5).*

Re claim 8, Galand discloses measuring aggregate bandwidth usage against a congestion onset threshold (column 5, lines 33-39).

Re claims 9, 10, 15, 21, and 23, Galand discloses setting and receiving of the BECN and EFCI bit in FR and ATM network protocol, respectively (column 6, lines 61-63; column 8, lines 18-20).

Re claims 18 and 20, Galand discloses a call initiation by a user using ATM and FR network (column 6, lines 53-54).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Galand in view of Bustini et al. (U.S 5313454), hereinafter referred to as Bustini.

Re claims 6 and 7, Galand discloses a network node including a series of buffers (figure 3), but fails to show a reassembly and fragmentation buffer. However, Bustini shows a packet assemblers/disassemblers (PADs) buffer (column 9, lines 40-42). It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a PAD buffer of Bustini in Galand to assemble and format data cells (packets).

Claims 11, 17, 19, 22, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Galand.

Re claims 11 and 22, it is well known in the art that a predetermined bit in the TOS byte in an IP is set to indicate explicit congestion notification.

Re claims 17 and 25, Galand fails to show a data transfer device comprising a DSL concentrator. However, it would have been obvious to one having ordinary skill in the

art at the time the invention was made to replace a network access node of Galand with a DSL concentrator to support VoDSL technology since Galand can support any type of traffic (column 6, lines 52-53).

Re claim 19, Galand fails to show a call initiation by using VoIP. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make a call in Galand by using VoIP (column 6, lines 52-53).

Allowable Subject Matter

5. Claims 12 and 13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
6. Claims 12 and 13 allowable over the prior art of record since the cited references taken individually or in combination fails to particularly disclose determining, based on expiration of a timer, nonuse of network access device and sending spurious messages to said nonused network access device to prevent initial establishment of a communication channel through said distributed network. It is noted that the closest prior art of record, Galand shows a method of evaluating congestion status as long as the time-out is not reached. However, Galand fails to suggest the specific use of a timer in determining nonuse of network access device and sending spurious messages to said nonused network access device to prevent initial establishment of a communication channel through said distributed network as required by the claimed.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
- US Patent (6765873) to Fichou et al. discloses connections bandwidth right sizing based on network resources occupancy monitoring
 - US Patent (6144636) to Aimoto et al. discloses packet switch and congestion notification method
 - US Patent (6747953) to Qureshi et al. discloses congestion control for packet-based network using call blocking
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hong Cho whose telephone number is 571-272-3087. The examiner can normally be reached on Mon-Fri during 7 am to 4 pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky Ngo can be reached on 571-272-3139. The fax phone number for the organization where this application or proceeding is assigned is 571-273-3088.


RICKY NGO
PRIMARY EXAMINER

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hong Cho
Patent Examiner
12-06-2004